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IN THE COURT OF APPEAL OF THE STATE OF  
CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

JOHN RAY GHOLAR,

Defendant and Appellant.

B301387

(Los Angeles County  
Super. Ct. No. A091875)

APPEAL from an order of the Superior Court of Los Angeles County. Lauren Weis Birnstein, Judge. Affirmed.

John Ray Gholar, in pro. per.; Lynette Gladd Moore, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Respondent.

In 1987, a jury convicted appellant John Ray Gholar of a sex offense against his minor daughter, and he served a prison sentence for that conviction. In 2001, appellant was convicted of another sex offense on a minor child, and was sentenced to 35 years to life in prison. (*People v. Gholar* (June 20, 2002, F037654) 2002 Cal. App. Unpub. LEXIS 5689, at \*1.) At his 2001 trial for this second offense, appellant's daughter testified about the sexual acts appellant committed against her when she was a child.

In June 2019, appellant moved in propria persona to vacate his 1987 conviction under Penal Code section 1473.7. He contended: (1) the trial judge had committed various prejudicial errors; and (2) his daughter's testimony at his 2001 trial established his actual innocence of the crime of which he was convicted in 1987. The superior court treated appellant's motion as a petition for writ of habeas corpus and denied relief, noting that appellant had raised the same claims in a prior habeas petition and that they had been rejected, and concluding he was therefore barred from raising these claims again. Appellant timely appealed.

Appellant's appointed counsel filed a brief raising no issues and invoking *People v. Serrano* (2012) 211 Cal.App.4th 496 (*Serrano*). Under *Serrano*, when appointed counsel raises no issue in an appeal from a post-judgment proceeding following a first appeal as of right, an appellate court need not independently review the record. (*Id.* at 498.) Appellant filed a supplemental brief. In it, he insists he filed a motion to vacate the 1987 judgment under Penal Code

section 1473.7 (rather than a habeas petition), and reasserts the same claims of actual innocence and trial error he raised below.

However, appellant does not contest that his claims had previously been raised and rejected; nor does he establish any ground that would permit him to raise the same claims again. Appellant therefore fails to raise any arguable contention that the superior court erred in denying him relief.<sup>1</sup> (See *People v. Hertz* (1980) 103 Cal.App.3d 770, 780 [appellant has affirmative duty to show error].)

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<sup>1</sup> While we affirm the trial court's order based on this ground alone, we additionally observe that appellant raises no arguably valid claim under Penal Code section 1473.7. Effective January 2017, that provision permits a person who is no longer imprisoned or restrained to move to vacate a conviction for either of the following reasons: (1) a prejudicial error damaged the person's ability to understand, defend against, or knowingly accept the actual or potential immigration consequences of a plea of guilty or no contest; or (2) newly discovered evidence of actual innocence exists that justifies vacating the conviction. (Pen. Code, § 1473.7, subd. (a).) A person relying on newly discovered evidence must bring the motion to vacate the judgment "without undue delay" from the time the person discovered the evidence or could have discovered it with the exercise of due diligence. (*Id.*, § 1473.7, subd. (c).) Appellant brought his actual innocence claim in June 2019, about 18 years after his daughter's 2001 testimony, on which he relies, and two and a half years after Penal Code section 1473.7 became effective. This claim is therefore untimely. Appellant's other claim, assigning error to the trial judge, is not cognizable under section 1473.7, as it is neither a claim of actual innocence nor a claim pertaining to immigration consequences of a plea of guilty or no contest. (See § 1473.7, subd. (a).)

**DISPOSITION**

The superior court's order is affirmed.<sup>2</sup>

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MANELLA, P. J.

We concur:

COLLINS, J.

CURREY, J.

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<sup>2</sup> Appellant's pending motions are denied.